

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

NEIL ADAMS McGINNIS,

Plaintiff,

v.

DONALD HOLBROOK, BERNARD
WARNER, DR. JOHN EDWARDS,
JOHN DOE and JANE DOE,

Defendants.

NO: 4:15-CV-5072-TOR

ORDER ADOPTING REPORT AND
RECOMMENDATION, DENYING
LEAVE TO PROCEED *IN FORMA*
PAUPERIS AND DISMISSING
ACTION

BEFORE THE COURT is Magistrate Judge Hutton's Report and Recommendation to deny Plaintiff leave to proceed *in forma pauperis* and to dismiss this action for failure to comply with 28 U.S.C. § 1914 (ECF No. 19). Plaintiff, a prisoner at the Washington State Penitentiary, is proceeding *pro se*; Defendants have not been served.

ORDER ADOPTING REPORT AND RECOMMENDATION, DENYING LEAVE
TO PROCEED *IN FORMA PAUPERIS* AND DISMISSING ACTION -- 1

1 On October 5, 2015, the Court directed Plaintiff to show cause within thirty
2 (30) days why application of 28 U.S.C. § 1915(g) should not preclude him from
3 proceeding *in forma pauperis* (ECF No. 15). Plaintiff had failed to present facts
4 showing he was under imminent danger of serious physical injury at the time he
5 presented his initial complaint. *Andrews v. Cervantes*, 493 F.3d 1047, 1055-56 (9th
6 Cir. 2007).

7 Plaintiff was then granted a generous extension of time until December 28,
8 2015, to comply (ECF No. 18). When he failed to do so, the above referenced Report
9 and Recommendation was entered.

10 Rather than file Objections, Plaintiff twice submitted a “Response” to the
11 original Order to Show Cause (ECF Nos. 20 and 21). Both responses are dated
12 December 22, 2015, were drafted by an anonymous “jailhouse lawyer,” and were
13 received on January 7 and 8, 2015, respectively. They are not responsive to the
14 Order to Show Cause.

15 Then, on January 14, 2016, Plaintiff submitted a letter in which he states that
16 he wishes to “drop this case.” (ECF No. 22). The Court liberally construes this
17 declaration as Plaintiff’s consent to the dismissal of this action as set forth in the
18 Report and Recommendation.

19 There being no Objections, **IT IS ORDERED** the Report and
20 Recommendation (ECF No. 19) is **ADOPTED** in its entirety, the application to

1 proceed *in forma pauperis* is **DENIED** pursuant to 28 U.S.C. § 1915(g), and this
2 action is **DISMISSED** for failure to comply with the filing fee requirements of 28
3 U.S.C. § 1914. **IT IS FURTHER ORDERED** that all pending Motions are
4 **DENIED as moot.**

5 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
6 Order, enter judgment of dismissal without prejudice, forward a copy to Plaintiff and
7 close the file. The Court certifies any appeal of this dismissal would not be taken in
8 good faith.

9 **DATED** January 22, 2016.



13
14
15
16
17
18
19
20

Thomas O. Rice
THOMAS O. RICE
United States District Judge